**A Fine Mess: Fine Bros, Copyright and Trademarking Laws**

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**Introduction**

With the advancement of technology and the internet, many people now use this medium as a way of work and a career choice. YouTube, a popular video-sharing website founded in February 14, 2005 is one of the fastest growing mediums for people in today’s tech-savvy age. In July 2016, Alexa Internet, a web traffic analysis company rated YouTube the second most visited site (Alexa Internet 2016). Bullas notes that there are over 60 hours’ worth of video content uploaded to YouTube every minute (Bullas 2016).

Among all the uploaders that use YouTube as a source of revenue, Fine Brothers Entertainment (Fine Bros) is one of the first few that took the opportunity that YouTube provided to reach millions of users. Joining YouTube on June 4th, 2007 Fine Brothers Entertainment shapes its focus on creating innovative programming for millennial and digital native audiences in today’s age (Fine Brothers Entertainment 2016). They aim to produce and distribute content online that seek to entertain and engage their audiences. Using YouTube as their primary source, they aim to produce content each week (Fine Brothers Entertainment 2016).

On YouTube, the Fine Bros are widely known for their ‘react’ videos. This format of video shows reactions from a group of individuals about a subject/viral video/song/topic. The individuals will watch a short except from the topic and react to it as well as answering a couple questions after the video is over. One video gets an average of over 1 million views in one week. This draws attention and allows them to gain revenue from producing these videos (YouTube 2016).

**The Controversy**

On January 26, 2016, Fine Brothers Entertainment released a video that would spark a huge controversial problem that affected the society on YouTube. Co-Founders Rafi Fine and Benny Fine released a video on YouTube seeking to expand their market and reach more viewers worldwide. Rafi Fine says “we want to create new content together, this is not only a huge step for our company, but for the entire global media industry”. Benny Fine claims that people from all around the world wanted to expand ‘react’ further and this is what both co-founders have wanted to. He then announced that the company will be launching a new program called React World, where people all around the world would be able to license their content and create their own videos following the format of the Fine Bros (YouTube 2016). Now, Vice President of YouTube content partnerships, Kelly Merryman praised the brothers for an innovative business plan. (Hern 2016). They called it licensing, and this is where the problem started.

Instead of paying for their products, the company decides to share the revenue after the video is being uploaded. They will also be providing all the guidance required to copy their video format and will be featured by the company in their videos. This step was made because Rafi Fine claimed that their format of video has been stolen by other television companies and they have used the same format without their consent. The Fine Brothers Entertainment started this program to stop other people from copying their format and by trademarking the word ‘react’, it will prevent people from stealing their revenue.

This comes after the Fine Bros lashed out at Ellen DeGeneres after realizing that she had used their format without seeking their consent first. They tweeted that “it was a shame to not have the show reach out to us”. Later, they also tweeted that it was a sad day for the web community when Buzzfeed ran a similar format of teens watching 90’s music (Hern 2016).

Since 2015, Fine Brothers Entertainment applied to trademark terms, including “Kids React”, “Adults React”, and “Celebrities React”. With the addition of the new trademark “React”, they are able to allow users to use the word react in their title under their program, “React World”. (Foxx 2016).

**The Response**

After the release of the video, Fine Brothers Entertainment received backlash from viewers worldwide. They sparked fury and discomfort among communities on YouTube and Reddit. A live stream was launched showing the number of subscribers following Fine Bros dropping 65 thousand subscribers in the span of 3 days (Mooney 2016). Fans of this format of videos fought back and argued that the duo did not invent the reaction video format that they claimed they came up with. (NEWS 2016). Other YouTubers created reactions videos to their announcement video critiquing their style and how this step is absolutely bizarre. The irony of this controversy is that after the releasing of the announcement video and the losing of 65 thousand subscribers, the Fine Bros channel received 23,380,505 additional views to their channel (Mooney 2016).

**Fine Brothers Entertainment’s Response**

After receiving a huge backlash and comments from their announcement video, Rafi and Benny Fine released another video, explaining their situation. They explained and apologized for how they confused people into trademarking their react format. They were only specifically referencing their 'react' format and not the general view. “We do not own the genre”, said Benny Fine. They defended their claim that they were referencing all of their format together collectively, not one or two aspects of it. In the end, they agreed to rescind all of their “react” trademarks and applications, discontinue the React World program and release all past content ID claims (Bailey 2016). They decided to close down the initiative entirely after realizing that they have built a system that could easily be used for the wrong. (NEWS 2016). “It has been a hard week, but they plan to keep making great content with the help of their amazing staff,” The Fine Bros says after receiving negative connotations from the public. Since then, they have removed all videos concerning the React World initiative. (NEWS 2016).

The Fine Bros’ licensing program has now become one spectacular failed event, and it still remains whether someone can come up with a more viable solution for the future of YouTubers (Whatson 2016).

**Other Issues**

This issue of trademarking has recently been a phenomenon among cyber space. Kosner writes how Candy Crush Saga, the famous mobile game has trademarked the word ‘candy’ (2014). This move frustrates many developers and companies as they are now required to remove all products that contain the word ‘candy’ in it. Parallel to the Fine Bros issue, people became mad and tried to oppose it as ‘candy’ is such a common word to be trademarked. However, unlike the Fine Bros, Candy Crush Saga has the support of Apple, and thus their trademark still stands today (Kosner 2014).

In 2012, Navajo Nation sued Urban Outfitters for using the word “Navajo” on its products without permission. Navajo Nation were unhappy as it confused consumers as they were not affiliated with Urban Outfitters and their ‘Navajo’ product line. This caused Urban Outfitters to take that line down.

**Why does this matter?**

Copyright infringement and laws has been around for more than 5 centuries. Starting from the press in 1518, this law protects people whose creation are not tangible and can be manipulated easily. This law is very applicable to people in this age as many things are now found online and people are able to legally seek a revenue through this law. The Fine Bros, Candy Crush Saga, Navajo Nation and many others should be aware of this law and how it protects them, though be cautious of abusing it and causing an uproar by consumers. The case of “React World” is not unknown, and it the Fine Bros had researched and presented their case in a proper manner, controversies could have been avoided and they may be able to launch the program.

**The Copyright Law**

Copyright deals with the area where property cannot be held by physical substance. It deals with property that a person cannot lock away for safekeeping (Pember and Calvert 2015). In today’s age, the ownership of content becomes a blurry line as information can be found anywhere on the internet, but what does belong to whom? Bloggers and users of the online medium often question this are to solve this involves elements of immaterial property law. The copyright law relates to patents, trademarks and plagiarism and people should be aware of this before making a claim to enforce copyright on a product.

*Patents*

Patent protection is an important element in the development of the nation (Pember and Calvert 2015). In some cases, the patent office is able to enforce an inventor/creator to give up their secrets, in exchange for a government-sanctioned monopoly on their product. This is the reason why we are able to enjoy productions and inventions of previous scientists. They shared their invention with the world and the government supported them.

There are three different kinds of patent protections. They are utility, design and plant protection (Pember and Calvert 2015). Utility patent protections involves machines and techniques to improve them. Designs that benefits a community can also be patented so that the well-being of the community can be improved. Plant protection is a little more unique. This is to help farmers and the agriculture economy in producing seeds in a certain way.

People are not able to claim patent rights by simply filling out a form. They would have to go through a process conducted by the U.S government. The term, ‘pat. pending’ explains that patent has been applied and is waiting for approval from the government (Pember and Calvert 2015).

*Trademarks*

Trademark is any word, symbol or device that makes an individual/company’s work unique and special. The trademark promises a consumer that the product purchased is from the specific manufacturer and is not getting ripped off (Pember and Calvert 2015). However, not everything can be trademarked just because you are using it. It has to be a unique term that has association with the product. When a trademark is registered it is limited to a specific category. In the case of the Fine Bros, the word ‘react’ was only trademarked under the entertainment industry. (Foxx 2016).

Furthermore, this law also protects service marks for businesses such as McDonalds and Holiday Inn. (Pember and Calvert 2015). The design and colors associated with it can be protected under this law. Once registered, the trademark only lasts for 5 years, and it has to be renewed. However, after that period, renewal is only required after a 10-year period. (Pember and Calvert 2015).

The four main functions of trademarks and service marks are identifying a manufacturer’s product from the others, signifying that all goods come from the same manufacturer and only from one source, signifying equal quality throughout all the products produced and they serve as an instrument in advertising and selling the product. (Pember and Calvert 2015). With all this taken into consideration, a manufacturer is able to obtain trademark on its product to protect it from theft and tarnishing their reputation.

*Plagiarism*

Plagiarism refers to the action when a source takes someone else’s product and passes it as their own creation (Pember and Calvert 2015). The key in this is when credit is taken when it is rightfully not theirs. This is a huge issue and it even happens on a collegiate level, as students may sometimes take excerpts from authors and not credit them.

What separates plagiarism from patent and trademark is that this could be argued from an ethical standpoint. Companies could argue that the idea was created and it unintentionally violated the plagiarism law. The best way to avoid this situation is to give credit where it is due.

Copyright law protects “all works of authorship fixed in a tangible medium of expression” (Pember and Calvert 2015). Looking at the Fine Bros case, we are now able to dissect the case and reason on whether they should have faced backlashed or was legally able to go ahead with starting project “React World”.

**The Issue**

The Fine Bros tried to obtain copyright laws to the word React and it’s medium of reaction videos online. However, the people backlashed at them and they were forced to abandon the project altogether. By relating this case to what the copyright law, The Fine Bros were attempting to trademark their YouTube videos and its style. They were trying to explain that all content coming from them will be of the same quality and the same producer and they are able to use their videos for advertisement purposes. With the launching of ‘React World’, they are able to achieve all that they have promised worldwide.

However, there is one condition that the Fine Bros were treading the line. The first function of the trademark is to be able to identify a product from others. The Fine Bros wanted to trademark the word ‘react’, and that in itself was a problem. People react to everyday situations, and putting it on camera has been the norm since the invention of the camera. The Fine Bros wanted to essentially copyright a human function, which has been in existence for centuries.

What was also a muddy area is the idea of their videos on YouTube. The Fine Bros has a very creative way of getting reactions of different age groups on different topics, and this is a great idea. However, Pember and Calvert notes in their book that ideas are not copyrightable (pg. 545). The copyright law is specific about what cannot be copyrighted. The law protects the literary or dramatic expression of an idea, such as a script, but does not protect the idea itself (Pember and Calvert 2015). They add that there is only a small difference and it is often difficult to separate expression from the ideas being expressed. After the backlash that the Fine Bros received from the public after the announcement of “React World”, they were trying to explain that they were trying to protect their specific format of their videos, and not the idea of having someone react to a video. Rafi and Benny Fine were trying to protect their revenue and expand their influence worldwide by leasing their specific format to their users. This means that the quality of their users’ videos will be of equal to those produced by the Fine Bros and everyone will be able to note that they come from the same ‘manufacturer’. This was what they were trying to protect. However, their previous encounters and reactions against the Ellen Show and Buzzfeed says otherwise. People were confused and mad at them for this reason. They seemed to say one thing but act to the opposite scale of it.

The federal statue lists a wide variety of items that can be copyrighted. They include literary works that includes computer software, musical works that includes any accompanying words, dramatic works that includes any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works and sound recordings (Pember and Calvert 2015). In their defense, the Fine Bros had no problems in trademarking and getting a copyright on their format of reaction videos, which includes background music and graphic works that is own by the two brothers. Throughout the years of their production, they have come out with unique introductions, graphics and background music that makes their videos unique. In the event that someone decides to recreate the exact same video that literally copies everything that the Fine Bros produces to the bone without their permission, Rafi and Benny has all the rights to sue and claim copyright privileges. However, Ellen and Buzzfeed took their ‘idea’ of reaction videos and they made a huge fuzz about it, which caused people to be mad and angry at the brothers.

**Fair Use**

Pember and Calvert writes on how owners of the copyrighted content are granted almost exclusive monopoly over the use of their creations (pg.554). The word almost is key to this statement as there are four limitations on this monopoly. They include having the work being something that is protected by the law, protection only affects the original authorship or creation – unoriginal creations cannot be protected, copyright laws do not last forever and the concept of fair use. Fair use has been defined by the court as a rule of reason, to balance the author’s right to compensate for his work, on the one hand, against the public’s interest in the widest possible dissemination of ideas and information on the order (Pember and Calvert 2015). The use of fair use permits limited copying of an original creation that has been properly copyrighted and has not yet fallen into the public domain. The court considers the following factors when examining a particular work, which includes the purpose and character of the use, the nature of the copyrighted work, the amount of substantiality of the portion used in relation to the copyrighted work as a whole, and the effect of the use on the potential market for or value of the copyrighted work.

The Fine Bros created content on YouTube that shows reactions of people on certain topics. The concept of Fair Use allows people to use their videos for purposes mentioned above. Because their work falls in the public domain, it is hard for the brothers to be mad about everything that people take the videos and evolve them to. They are protected under the law of fair use.

The Fine Bros may not have consulted a lawyer when trying to copyright their videos and specific words on YouTube as they were clearly unaware of the law that was already set in motion. Fair Use clearly states that unoriginal creations cannot be protected. Reactions are not something that anyone can claim, as they come with human functions. The brothers could argue that individual reactions produced from their videos are original, but then again, each individual is unique and have unique reactions. The blurred line between what is original may have confused the Fine Bros and they may not have considered researching deeper into the topic of copyright issues before publishing their idea of introducing ‘React World’.

Some would argue that all this is just for a show and a way to gain more followers and views as a whole, which in fact they did. The Fine Bros gained more subscribers and views in the past 24 hours after the video of the announcement of ‘React World’ (Mooney 2016). The brothers became the sensational topic among other YouTubers and they became the trending topic amongst Internet users for the span for over 48 hours. The fact that they would just release the video without investigating into copyright issues and its uses seems highly unlikely as they know that they will receive heavy backlash if they go against the law. This theory also seems unlikely as they released an apology video and took down the original video immediately after receiving heavy backlash from the public.

The Fine Bros may have made an honest mistake when they decided it was a good idea to release a video on their decision to expand their video network globally. The issue of backlash could have been avoided if the brothers added specifically on how and what they are trying to achieve through their program of ‘React World’ and giving clarity to the people of the Internet. I believe confusion and lack of clarity is what caused Internet users to lash back at them as they based the motives of the Fine Bros’s announcement video and through that and only that realized that the brothers were trying to copyright reactions.

**Discussion**

I believe that the Fine Bros made mistake that resulted in a no turning back situation. Rafi and Benny released their video with an intention with expanding their company and their video formats, with the help of its subscribers and licensing their format out to them. However, they tried to copyright words that are clearly common in everyone’s dictionary and the word ‘react’ (which they tried to obtain copyright for) is used frequently by everyone else. Taking away something that belongs to the public and suddenly asking for a fee if you would still want to use it will cause unsatisfied and restless people. Pember and Calvert mentions in their book on how a trademark is the ability to identify one seller’s goods and distinguish them from goods sold by others (2015). As discussed earlier, reactions are something that are built in the human natural system and it should not be something that you can ever charge a fee for. Creating a reaction video is not a completely unique idea, as it has been around since the time when photography even existed, by capturing the moment.

The ethical concept of utilitarianism supports my claim above of supporting with the public’s decision. These ethics are explored and used to further strengthen my argument and opinions.

*Utilitarianism*

Stemming from the John Mill’s concept of utilitarianism, I believe that the public had every right to protest the Fine Bros in their actions of trademarking. Mill defines utilitarianism as a theory based on the principle that ‘actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness (1865). He argues that pleasure can differ in quality and quantity, and that pleasures that are rooted in one's higher faculties should be weighted more heavily than baser pleasures (SparkNotes 2016).

Utilitarianism looks at the ratio between the number of people and the happiness that comes with that ratio. The higher the number of happy people, the action needed to achieve that is the one John Mill would go for. In the case of the Fine Bros, the public were outraged when the Fine Bros wanted to trademark a reaction video. Rafi and Benny had to apologize and retract the proposal of licensing their video format, to restore the relationship that they had with the public and to stop others from raging at them. The public’s happiness outweighs the licensing proposal that the Fine Bros had and it was clearly shown when the Fine Bros lost over 60 thousand followers after releasing the video.

*Poynter Model*

The pointer model examines the case and identifies the ethical problems that comes from it. In most cases, it is the result of two ethical goods conflicting with each other. In the case of the Fine Bros, I believe that the two ethical goods are the company protecting their brand and model and the happiness of the public.

*Protecting their brand*

The Fine Bros wanted to protect their brand and source of income. They were trying to trademark their brand and protect their format from being taken over by a someone else. Both Rafi and Benny were aware of the idea of other people (Ellen and Buzzfeed) taking the idea of creating reaction videos and benefiting from it. The brothers both realized that the idea of creating reaction videos cannot be copyrighted, thus they came up with “React World”, to go around the idea of it. Initiating a move such as this and succeeding would have potentially made the way for other YouTubers to safely protect their content from being stolen from other larger companies. However, the people/the public did not respond well to this approach, and the public’s happiness were affected. This was what led them to oppose this idea and eventually leave a scar to the Fine Bros.

*The People’s Happiness*

After the release of ‘React World’ by Rafi and Benny Fine, their subscribers and the public were outraged. 60 thousand people unsubscribed from their channel and videos criticizing their move were posted on YouTube. The Fine Bros had to then release another video apologizing for their previous video and clarify that they were not intending to trademark the idea of reaction videos, rather the specific format that they had. The people did not buy it and the Fine Bros had to cancel the initiative and suffer the repercussions from it.

The Fine Bros considered both sides of the ethical problem, and concluded that their subscribers and the public’s happiness and them being content outweighs their personal gain of trademarking a product. Based on Pember and Calvert’s view on copyright laws; including patents, trademarks and fair use, I believe that ultimately the first video that the Fine Bros released did not provide enough and specific information about their idea of kick starting ‘React World’. The public and their subscribers did not receive the news well and it was too late for the Fine Bros to further explain themselves, as negative connotations blew their wall up hours after they released the video. I believe that their move of initiating this project could have been better and clearer, to avoid misunderstanding. However, the public thought that they broke the copyright law by trying to trademark something that is essentially an idea.

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